IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3246 OF 2004

IN

FIRST APPEAL NO. 625 OF 2004.

Smt. Dipti Dilip Nalawade
& others. ..Applicants.

VERSUS.

The Oriental Insurance Co Ltd
& Ors. ..Respondents.

...

AND

CIVIL APPLICATION NO. 2725 OF 2003

IN

FIRST APPEAL NO. 625 OF 2004.

The Oriental Insurance Co. Ltd. ..Applicant.

VERSUS.

Smt. Dipti Dilip Nalawade
& others. ..Respondents.

...

Appearance in C.A. No. 3246 of 2004.:

Mr. G. R. Rege i/b Ms. Leena Sawant for the applicant.
Mr. S.M.Vidyarthi for the respondents.

CORAM: S. B. MHASE &
R. S. MOHITE, JJ.

DATE : SEPTEMBER 14, 2004.

P.C.:-

1. Heard both sides.

2. By this application, the applicants have prayed that the applicants may be allowed to withdraw the amount deposited by the original appellant - respondent herein by modifying the order passed in Civil Application No.2725 of 2003 in First Appeal No. 625 of

2004. In Civil Application No.2725 of 2004 this Court has directed the appellant - The Oriental Insurance Company Ltd. to deposit the decretal amount. However, it was further directed by the interim order that the amount shall not be disbursed to the present applicants unless there is order of this court. As per this order, the appellant - insurance company has deposited the amount of Rs. 16,16,929/- in the trial Court. The claim of the insurance company is that they are not liable since the driver was not having any licence. However, what we find is that in case the Insurance Company succeeds, it has a right to recover the said money from the person who is the policy-holder, namely, the Original Respondent No.7 in the appeal. In the circumstances, we find it appropriate to release 2/3rd amount in favour of the applicants in the following manner:

2/3rd amount be released in favour of the applicants. However, out of the 2/3rd amount 50% shall be paid to the applicants without surety and remaining 50% shall be paid to them against the solvent surety. After disbursing 2/3rd amount as stated above, 1/3rd amount which remains with the trial court shall be deposited by the trial court in the

Nationalised Bank initially for a period of 3 years and if by that time the appeal is not disposed of the trial court shall deposit the same for a further period of 3 years each time till the final disposal of the appeal. The interest accrued on such deposit be paid to the applicants- original claimants.

3. With these directions, both the civil applications are disposed of.

4. All parties, including the trial Court to act on an ordinary copy of this order duly authenticated by the Court Sheristedar of this Court.

(R. S. MOHITE, J.) **(S.B.MHASE,J.)**